IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

TRC.No. 90 of 2001()

TA.665/1992 of S.T.A.T.ADDL.BENCH-I, ERNAKULAM
.....

REVISION PETITIONER: RESPONDENT - RESPSONDENT - REVENUE

STATE OF KERALA REPRESENTED BY
THE DEPUTY COMMISISONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY SPL. GOVERNMENT PLEADER (TAXES) SRI V.V.ASOKAN.

RESPONDENT: APPELLANT - APPELLANT - ASSESSEE

M/S. INDIAN OXYGEN LIMITED, ERNAKULAM.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

T.R.C. No.90 of 2001

Dated, this the 12th day of June, 2007

ORDER

H.L. DATTU, CJ.

This tax revision case arises out of an order passed by the Sales Tax Appellate Tribunal, Ernakulam in T.A.No.665/1992 dated 30.9.2000.

2. The Revenue has raised the following questions of law for our consideration and decision. The same is as under:

> "a) Is the Tribunal correct in law, in holding that nitrous oxide is not a chemical as the same is in gaseous form?
>
> b) Is not the Tribunal in the instant case in error in classifying nitrous oxide as an unclassified item overlooking the specific entry in which it could be comfortably accommodated for the purpose of taxation?"

3. Shri Ashokan, learned Special Government Pleader (Taxes) would bring to our notice the observations made by a Bench of this Court in the decision in ***State of Kerala v. India Oxygen Ltd. - [2003] 129 STC 471.*** In the said decision the court, without deciding whether it is a chemical or not, has remanded the matter to the Tribunal. The observations made by this court is as under:

> "We uphold the finding of the Tribunal in that regard. So far as "nitrous oxide" is concerned, we are of the view that the matter must go back to the Tribunal for considering the

question whether “nitrous oxide” will fall under any of the other entries in the First Schedule to the Act. We therefore set aside the order of the Tribunal in respect of nitrous oxide and remit the matter to the Tribunal for consideration whether this item will fall under any of the specific entries in the First Schedule to the Act including “medicine”. The Tribunal will decide this question afresh with notice and opportunity to the respondent-assessee.”

4. We are bound by the decision of a Division Bench of this Court.

5. Respectfully following the observations made by a Division Bench of this Court, this revision petition is disposed of as under:

i) The order passed by the Tribunal in T.A.No.665 of 1992 dated 30.9.2000 is set aside.

ii) The matter is remitted back to the Tribunal to reconsider the issue as observed by this court in the case of ***State of Kerala v. India Oxygen Ltd. - [2003] 129 STC 471*** after affording an opportunity of hearing to both the parties.

With these observations and directions, this tax revision case is disposed of. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/-

H.L. DATTU, C.J. &
K.T. SANKARAN, J.

T.R.C. No.90 of 2001

ORDER

Dated, 12th day of June, 2007